

IN THE CLAIMS

In accordance with Rule 37 C.F.R. 1.121, please amend the claims in accordance with the following LISTING OF CLAIMS wherein the amended claims are indicated as "original", "currently amended", "cancelled", "withdrawn", "new" "previously presented", or "not entered" as the case may be. In accordance with the Rules, the text of cancelled and not entered claims is not presented.

LISTING OF CLAIMS

1. (Previously presented) A leverage end cap for use on a baton having a generally cylindrical elongated handle portion defining the longitudinal axis of the baton and adapted to be grasped in a user's hand, the handle having a proximal end and an opposite distal end, the leverage end cap comprising:

a unitary body defining a longitudinal axis and having an enlarged knob end;

said body having an opposite integral longitudinally extending generally cylindrical end of an external surface diameter similar to the cylindrical handle portion of the baton and adapted for attaching the cap to the baton at the proximal end of the baton in substantially axial alignment therewith, and

said body further having a reduced diameter circumferential groove of generally U-shaped concave profile intermediate and contiguous to both said knob and attaching ends and configured and sized to receive the little finger of the user's hand in generally wrapped relation with the knob engaging the base of the user's hand adjacent the little finger during use and with at least the pointing finger of the user's hand wrapping about and gripping the handle portion of the baton to firmly grip the baton adjacent the proximal end of the baton, whereby during use the end cap creates a fulcrum point at the user's little finger, increases the effective moment arm of the baton, and prevents axial release of the baton from the user's grip.

2. (Previously presented) The leverage end cap of claim 1, wherein the knob is generally hemispheric in shape.

3. (Previously presented) The leverage end cap of claim 2, wherein the generally hemispheric knob defines a generally flattened exposed end surface.

4. (Previously presented) The leverage end cap of claim 3, wherein a distal end of the knob defines the circumferential groove of concave profile.

5. (Previously presented) The leverage end cap of claim 1, wherein said opposite end of said body includes an internal thread for cooperative axial engagement with an externally threaded proximal end of the baton.

6. (Previously presented) The leverage end cap of claim 5, wherein the generally cylindrical and knob ends of the cap are formed integral with the circumferential groove portion.

7. (Previously presented) The leverage end cap of claim 1, wherein the enlarged knob end defines a means for holding a decorative element.

8. (Previously presented) A leverage end cap for use on an expandable baton having an elongated generally cylindrical handle defining the longitudinal axis of the baton and adapted to receive at least one internal telescoping section extendable from a distal end of the handle, the end cap consisting of:

a unitary body having an enlarged knob defining a proximal end of the end cap;

said body having a cylindrical distal end having a diameter similar to the diameter of the elongated baton handle but of a substantially smaller external diameter than said knob and configured to releasably attach the end cap generally axially to the baton handle at a threaded proximal end of the baton handle, and

said body having an annular groove of generally U-shaped concave profile and disposed between and contiguous to said knob and said cylindrical distal end, said groove having a minor transverse cross-sectional area substantially less than the cross-sectional area of said distal end of said body to receive the little finger of a user's hand in wrapped relation about said groove so that the little finger is captured between said knob and cylindrical distal end, said end cap having a longitudinal length such that at least the pointing finger of the user's gripping hand can grip a proximal end portion of the baton handle whereby the baton can be held firmly adjacent the proximal end of the baton handle with the leverage end cap creating an increased leveraged moment arm fulcrum at the annular groove.

9. (Previously presented) The leverage end cap of claim 8, wherein the knob is generally hemispheric in shape.

10. (Previously presented) The leverage end cap of claim 9, wherein the generally hemispheric knob defines a proximal end and a distal end, the proximal end being flattened.

11. (Cancelled)

12. (Previously presented) The leverage end cap of claim 8, wherein the cylindrical segment has an internal threads surface for cooperative engagement with a baton handle having an externally threaded proximal end segment.

13. (Previously presented) The leverage end cap of claim 12, wherein the cylindrical segment and knob are formed integral with the annular groove portion.

14. (Previously presented) The leverage end cap of claim 8, wherein the knob defines a means for holding a decorative element.

15. (Currently amended) A method of increasing the leverage impact force obtainable with a baton having an elongated hand-graspable generally cylindrical handle defining the longitudinal axis of the baton and having a proximal end and a distal end, said method including the steps of:

providing a leverage end cap having a unitary body defining an enlarged proximal end knob, a generally hour-glass shaped annular groove contiguous to said end knob and having a minor diameter substantially smaller than the end knob, and a generally cylindrical distal end contiguous to said groove and having an external diameter generally similar to the diameter of the baton handle and greater than the minor diameter of said groove, said distal end defining means for attachment to the proximal end of the baton handle;

attaching the leverage end cap to the proximal end of the baton so that the end cap is generally axially aligned with the baton;

grasping the baton such that the little, or pinky, finger of the user's baton-holding hand is received in and wraps about the annular groove of the leveraged baton cap such that the end knob abuts the hand adjacent the little finger with at least one of the remaining fingers of the hand wrapped about the baton on or adjacent the end cap; and

maintaining said grasp throughout use of the baton.

16. (Previously presented) The method of claim 15, including the step of providing cooperative threadings within the leverage end cap and on the proximal end of the baton such that the baton and end cap can be releasably and rotatably connected.

17. (Canceled)

18. (Previously presented) A leveraging end cap for use with an expandable baton having an elongated generally cylindrical tubular handle section defining the longitudinal axis of the baton and having a proximal end and an opposite distal end, the proximal end having a peripheral thread thereon adapted to receive the end cap in mounted relation thereon;

said leveraging end cap including a unitary body having a first end adapted for releasable threaded engagement with the peripheral thread on the proximal end of the baton handle section so that the leveraging end cap is substantially axially aligned with the baton handle, said leveraging end cap having an enlarged knob second end and defining a circumferential reduced diameter curvilinear surface between and contiguous to said first and second ends of said leveraging end cap, said curvilinear surface being sized to establish a finger

grip to receive only the small finger of a user's hand in wrapped relation thereon when the proximal end of the baton handle is grasp in the user's hand, said leveraging end cap being operative to create a greater effective impact force moment for the baton when grasp by the user's hand than obtained when the tubular handle is grasp generally midlength thereof.

19. (Previously presented) A leveraging end cap as defined in Claim 18 wherein the knob end of the end cap is sized to engage the lateral outermost surface of the user's little finger when wrapped about the circumference curvilinear surface so as to prevent axial slippage of the baton from the user's hand during use.

20. (Previously presented) A method for increasing the leverage force obtainable with an elongated baton having a generally cylindrical handle defining a longitudinal axis and opposite proximal and distal ends with the proximal end enabling gripping in the palm of a user's hand, said method comprising:

providing a leverage end cap having a unitary body defining a longitudinal axis and having a first end of a transverse cross section of substantially similar size to the transverse cross section of the proximal end of the baton handle, said first end including means for releasably securing it to the proximal end of the baton in substantially axially aligned relation therewith, said leverage cap having an opposite second end defined by an enlarged knob having a substantially greater peripheral size than said first end, said cap having a circumferential groove of generally U-shaped concave profile between and contiguous to said first end and said knob end and having a minor transverse cross-sectional area substantially less than the cross-sectional area of said first end,

securing the first end of the leverage end cap to the proximal end of the baton, and

gripping the leverage end cap with one's hand such that the little finger of the hand is received within the circumferential groove and at least partially wraps the groove so that the knob engages the surface of the hand adjacent the little finger and prevents slippage of the hand in the direction of the knob and at least the first finger of the user's hand encircles the proximal end of the baton handle to thereby create an extended lever fulcrum at the little finger when manipulating the baton to impact an object.

21. (Previously presented) The method as defined in claim 20 wherein the step of securing the first end of the leverage cap to the proximal end of the baton includes connecting said first end of the cap to the baton by a threaded connection.

22. (Previously presented) A baton in combination with a leverage end cap enabling an increase in leverage force obtainable during manipulation of the baton to impact an object, said baton having a generally cylindrical handle defining a longitudinal axis and opposite proximal and distal ends with the proximal end enabling gripping in the palm of a user's hand, said leverage end cap having a unitary body defining a longitudinal axis and having a first end of a transverse cross section of substantially similar size to the transverse cross section of the proximal end of the baton handle, said first end being secured to the proximal end of the baton in substantially axially aligned relation therewith, said leverage cap having an opposite second end defined by an enlarged knob having a substantially greater peripheral size than said first end, said cap having a circumferential groove of generally U-shaped concave profile between and contiguous to said first end and said knob end and having a minor transverse cross sectional area substantially less than the cross-sectional area of said first end so that gripping the leverage end cap with one's hand such that the little finger of the hand is received within the circumferential groove and at least partially wraps the groove with the knob engaging the surface of the hand adjacent the little finger to prevent slippage of the hand in the direction of the knob and at least the first finger of the user's hand encircles the proximal end of the baton handle creates an extended lever fulcrum at the little finger when manipulating the baton to impact an object.

lead to ASP, and particularly Dr. Parsons, developing the leverage end cap as defined in the claims pending in the subject application and which enables the user to place his/her little finger of the gripping hand in the generally U-shaped profile annular groove in the leverage end cap and thereby create a fulcrum point at the user's little finger to increase the effective moment arm of the baton and thereby increase the striking force potential of a smaller lighter weight baton. In this respect, it is submitted that the aforescribed need for improving the striking force potential of a shorter (and thereby lighter) baton became apparent as the makeup of law enforcement personnel changed from traditional large size men to include smaller size law enforcement personnel and can be considered as a long felt but unsolved need.

As set forth in paragraph No. 9 of Dr. Parsons' Declaration, ASP experienced very significant commercial success with the leverage end cap as defined in the claims of the subject application. In this respect, Dr. Parsons states that ASP has sold over two million (2,000,000) leverage end caps as defined in the pending claims.

The aforementioned factors of solving a long felt need with the leverage end cap as defined in applicant's claims, and the commercial success evidenced by the sale of over two million leverage end caps as defined in the pending claims, constitute secondary indicia of non-obviousness as stated by the Supreme Court in *Graham v. John Deere Co.*, 383 U.S. 1 (1966) and followed by a multitude of case opinions rendered by the United States Court of Appeals for the Federal Circuit (Federal Circuit).

Paragraphs Nos. 10-13 of Dr. Parsons' Declaration address the Examiner's rejection of the claims pending in the application as of the November 14, 2005 Office Action but also states that his comments apply equally to the claims as presented in the Amendment filed May 12, 2006 in the subject application.

The basis for the Examiner's rejection of the claims pending in the application as of the November 14, 2005 Office Action is set forth in both the Amendment filed May 12, 2006 and in Dr. Parsons' Declaration. As reiterated in the recent Federal Circuit decision in *In re Kahn*, Fed. Cir. docket 04-16-16, decided March 22, 2006, most inventions arise from a combination of old elements and each element may often be found in the prior art, citing *In re Rouffet*, 149 Fed. 3d 1350, 1357 (Fed. Cir. 1998). The opinion in *Kahn* further states: "However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole."

In the subject application, it is respectfully submitted that neither the Hustad nor Ashihara references teach or suggest each element called for in applicant's claims now pending in the application. As set forth in applicant's Amendment filed May 12, 2006, the Examiner has acknowledged on page 3 of the November 14, 2005 Office Action that Hustad does not specifically disclose that the tapered neck portion (what the Examiner has held to be represented by reference numeral 16 in the Hustad reference) is a circumferential groove of concave profile nor does the cylindrical segment distal end have a smaller external diameter than the knob of the end piece as claimed." The Examiner has held that Ashihara teaches an end cap for use with a leverage baton handle 2 and states: "Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the end piece device of Hustad to incorporate the specific shape of the end cap as taught by Ashihara to provide an improved ergonomic end piece being sized to receive a user's finger in wrapped relation about a neck portion so that the finger is captured between a knob and a distal end such that a baton can be held firmly adjacent a proximal end of the baton with at (sic – a) steadfast and leveraged grip."

As pointed out in paragraph No. 6 in the Parsons' Declaration, the claims in the subject application call for the reduced diameter circumferential groove in the unitary body of the claimed leverage end cap as being sized to receive the little finger of the user's hand. This determines the proper gripping orientation of the hand on the leverage end cap during use with the remaining fingers and thumb gripping the distal end of the end cap and at least the pointing finger of the hand gripping the handle portion of the baton. The claimed manner in which the leverage end cap is gripped is important to achieving the object of the leverage end cap in association with the baton; namely, increasing the fulcrum length of the baton and thereby its striking force over conventional hand-gripping of only the cylindrical handle portion of a baton.

Finally, the Examiner has set forth no motivation found in either the Hustad or Ashihara references for modifying the Hustad pressure point device in a manner to achieve applicant's claimed invention. As the court said in *In re Kahn*, the "motivation-suggestion-teaching" test asks not merely what the references disclose, but whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art and motivated by the general problem facing the inventor, would have been lead to make the combination recited in the claims, citing *Cross Med. Products*, 424 Fed. 3d at 1321-24. As pointed out in both